IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1557 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARWAD MEPABHAI CHOTHABHAI - Applicant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR JV JAPEE for Applicant(s) : 1,
Ms. Meeta Panchal, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 08/12/2005

ORAL JUDGMENT

1. Heard ld. Counsel Mr. Janak Jappi for the petitioner and ld. APP Ms. Meeta Panchal for the respondent State.

2. Rule. Service of Rule is waived by ld. APP Ms. Panchal for respondent State.Rule is fixed forthwith.

3. The present petition is filed by the petitioner against the order dated 15.09.2005 passed by ld. Judicial Magistrate, First Class, Idar, below application exh.28 as well as order dated 04.10.2005 passed by ld. Addl. Sessions Judge, 12th Fast Track Court, Himmatnagar, Camp :Idar in Criminal Revision Application No.92/2005 dismissing the said Revision Application and confirming the order passed by ld. JMFC, Idar below application Exh.28 preferred under section 451 of CrPC for the custody of muddamal cattle intercepted and seized from one motor vehicle carrying them and at present kept in one panjarapole under the orders of the Court. It is the say of the petitioner is that he is the owner of the entire lot of 104 animals i.e. sheeps & goats (hereinafter referred to as the muddamal livestock) which was being carried in a mini truck bearing registration No.RJ-27-G-7425 on 12.09.2005. The allegations against the accused shown in the FIR is that the muddamal livestock was being taken to the slaughter house in a cruel manner. They were tied in a truck making two story/compartments in the truck and there was no arrangement even for water and fodder for the muddamal livestock. According to the respondent State, accused persons have committed an offence punishable under section 5, 6, 8, 11 of The Cruelty to Animal Act and also

under Rule 123 of Motor Vehicle Rules and under section 192,177 of the Motor Vehicles Act. The fact of seizure of the muddamal livestock was brought to the notice of the ld. JMFC, Idar and under the orders of the Court, the livestock was ordered to be kept with Idar Panjarapole.

4. The the present petitioner preferred an application for return of muddamal livestock under section 451 of CrPC as stated above and prayed for custody of muddamal livestock pending trial against the accused persons and it is submitted that the petitioner is ready to abide by any condition that may be imposed by the Court while releasing the custody of the muddamal livestock. The basic contention of the petitioner is that he is dealing in the business of cattle-breeding and he has taken the muddamal livestock to Rajasthan for convenience in summer season and all the 104 sheeps and goats were being brought back to their native place in a truck in question and were on the way when vehicle was intercepted and the allegation that they were being taken to the slaughter house is false against the accused persons.

5. The ld. Magistrate as well as ld. Sessions Judge both, vide impugned orders, rejected the prayer observing that the petitioner is not dealing in the business of the cattle-breeding and this livestock is not registered in

his name in the village register. Necessary discreet inquiry was also made through the Secretary of Panchayat and the story that he had taken the muddamal livestock to Rajasthan in the summer to see that they are preserved well, is a created story. Ultimately, they were being carried to the slaughter house. The say of the petitioner, according to the State, is not correct that he is the owner of the muddamal livestock.

6. According to ld. Counsel Mr. Jappi for the petitioner, village panchayat is not being maintained properly and the petitioner has not registered his cattles (sheeps & goats) with the panchayat, but he is the owner thereof and is genuinely dealing in the business of cattle-breeding and ultimately the Court was requested to hand over possession of the said muddamal livestock by way of an interim arrangement pending trial instead of keeping the same in the panjarapole.

7. Undisputely, the alleged offence is not a second offence and there is no scope of confiscation, prima facie, if the contents of the case of the prosecution are considered and, therefore, the muddamal livestock should have been handed over to the present petitioner.

8. In response to the query raised by the Court, ld. Counsel Mr Jappi, on instructions from the petitioner who is present in the Court, states that the petitioner is ready to abide by any condition and she shall produce the muddamal livestock as and when asked by the ld. Trial Judge and ultimately if the Court decides to confiscate the muddamal livestock, then he shall produce the same before the Court. He is ready to give proper surety and personal undertaking and shall maintain the livestock in a good and healthy condition. While answering the question raised by the Court, ld. Counsel Mr. Jappi has fairly stated that to avoid allegations and counter allegations or any other complications as to the identity of the muddamal livestock if ordered to be handed over to the petitioner, the petitioner is ready to put a specific identification mark on each sheep and goat at the costs of the petitioner and that too under a supervision of a qualitifed Veterinary Officer. All the sheeps and goats, according to ld. Counsel Mr. Jappi, are young and it is possible for the doctor to put a specific identification mark on each sheep and goat of muddamal livestock like metal button or metal ring which are being normally put on such livestock by the owner to get such animals insured.

9. It was possible in the present case to hand over muddamal livestock to the owner when he claims to be the owner and when he is ready to abide by any condition that may be imposed by the Court. The ld. JMFC could have handed over the custody of the muddamal livestock to the owner. Certain stocks are of such a nature that it would be difficult for any individual or owner to produce a concrete proof as to the ownership thereof and the livestock is one such category of the stock. Both the lower Courts, while exercising discretionary jurisdiction, have failed in applying their minds and it appears that they have considered the allegations made in the complaint and failed to consider the practice to carry more sheeps and goats in a vehicle making two story/compartments so that they can be carried in more number and comfortably. Distance between the place of loading and the place where such livestock is to be unloaded, is also required to be considered. It is possible for a carrier of such livestock to arrange for a fodder and water and it is not always necessary to put water and fodder inside the vehicle for the livestock. It can be served scientifically.

10. So, without entering into the merits qua the discussion made by both the courts below in their

respective orders under challenge, this Court is of the view, even as per settled legal position, that the custody of the muddamal livestock should be handed over to the petitioner-owner especially when no other person had claimed any ownership thereof and the carrier of the livestock has also not controverted the ownership of the petitioner over the muddamal livestock.

11. For the reasons aforesaid, the petition is allowed. The impugned orders passed by both the Courts below are hereby quashed and set aside and ld. JMFC, Idar is hereby directed to hand over custody of muddamal livestock pending the hearing and final disposal of the criminal case pending before it, by way of an interim arrangement, to the petitioner- owner of the livestock which at present is kept under the orders of the Court with Panjarapole at Idar, on the following conditions:-

(i) The petitioner shall maintain each cattle with utmost care and shall produce the muddamal livestock (sheeps & goats) as and when asked and directed by ld. Trial Judge pending the trial or at the end of the trial.

(ii) He shall not sell or otherwise transfer any of the muddamal livestock to any third party and shall

preserve them in best possible manner.

(iii)In the event of recent death of any of the muddamal livestock (sheep & goat) under the custody of the petitioner, the same shall be shown to the Secretary/Sarpanch of the panchayat and the petitioner shall obtain a certificate to that effect and till then he shall not dispose of the body of such a dead animal;

(iv) The petitioner shall approach one qualified Veterinary Officer authorized and qualified to put identification mark on the animal and the petitioner shall see that each sheep and goat of muddamal livestock is given/put identification mark viz. metal button or metal ring at the costs of the petitioner so that each sheep and goat can be identified as muddamal livestock of the present case. One Rojnama shall be prepared in this regard and the petitioner as well as the person in charge of the panjarapole and the Veterinary Officer concerned shall put their signatures on the said Rojnama. Only after undergoing this exercise, the custody of the muddamal livestock shall be handed over to the petitioner.

(v) The petitioner shall file an undertaking before the ld. Magistrate while executing Surety of Rs.25,000/ (Rs. Twenty five thousand only) and the Personal Bond of the like amount that he shall comply with all the conditions and shall produce the muddamal livestock as and when asked and directed by the trial Court to produce during pendency of the trial or at the end of the trial and shall not transfer or sell the muddamal livestock to the third party. If need be, the ld. Trial Judge shall issue specific directions to the Panjarapole concerned that only on completion of formalities as aforesaid, muddamal livestock shall be handed over to the present petitioner.

12. It is clarified that out of 104 sheeps & goats seized as muddamal livestock, about 10 animals have died and, therefore, the aforesaid conditions would apply to remaining muddamal livestock and the panjarapole concerned shall hand over the remaining muddamal to the petitioner after complying with the conditions stipulated as above. If the Panjarapole at Idar has transferred the muddamal livestock to any other panjarapole for administrative convenience, then necessary arrangements shall be made by that panjarapole so that the petitioner

can be handed over the muddamal livestock.

13. With above observations and direction, the petition stands disposed of. Rule is made absolute accordingly.

(C.K. BUCH, J)

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